

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

JOSE A. NUÑEZ, et al.,

Plaintiffs,

Civil No. 07-1337 (JAF)

V.

INTERV MEDICAL DEVICE  
TECHNOLOGY, INC., et al.,

Defendants.

**OPINION AND ORDER**

Defendant Interv Medical Device Technology ("MDT") brings this motion for attorney's fees against Plaintiffs José A. Núñez, María A. Sepúlveda, and the economic partnership Núñez-Sepúlveda. Docket Document Nos. 31, 32. The motion is unopposed.

Unless otherwise indicated, we derive the following factual summary from the parties' filings. Docket Document Nos. 1, 12, 18, 23, 25, 26, 28, 31.

On April 20, 2007, Plaintiffs filed this action against Defendant in federal district court, alleging breach of contract and requesting damages and injunctive relief. Docket Document No. 1. At a hearing on April 30, 2007, we denied Plaintiffs' claims for injunctive relief and set forth a discovery schedule as to Plaintiffs' remaining claims. Docket Document No. 11.

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1           On June 20, 2007, Núñez and MDT filed a joint motion for an  
2 extension of time to complete discovery. Docket Document No. 18. We  
3 granted this motion on June 28, 2007. Docket Document No. 21.

4           On August 1, 2007, MDT moved for an order compelling discovery.  
5 Docket Document No. 23. MDT claimed that Plaintiffs had not responded  
6 to MDT's interrogatories and requests for production of documents,  
7 and that Plaintiffs had not turned over certain mandatory initial  
8 disclosures. Id. We granted the motion to compel discovery on  
9 August 9, 2007, requiring Plaintiffs to file the requested discovery  
10 by August 16, 2007. Docket Document No. 24.

11           On August 16, 2007, Plaintiffs served MDT with an "Answer to  
12 Interrogatory and Production of Documents" that contained several  
13 unidentified documents and the answers to certain questions. On the  
14 same day, MDT called Plaintiffs to complain about deficiencies in the  
15 disclosures. On August 21, 2007, the parties held a conference call  
16 to discuss the discovery deficiencies. MDT complained that Plaintiffs  
17 had not responded in writing to the request for production of  
18 documents; that the documents Plaintiffs turned over did not identify  
19 which responded to which interrogatory; and that Plaintiffs had not  
20 disclosed their expert witnesses within ninety days of the trial  
21 date, as required by Rule 26(a)(2)(c) of the Federal Rules of Civil  
22 Procedure. Plaintiffs requested a two-day extension of time to cure  
23 some of these deficiencies, which MDT granted.

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1           On August 23, 2007, Plaintiffs served MDT with an answer to the  
2 request for the production of documents. As part of this answer,  
3 Plaintiffs requested a ten-day extension to produce certain documents  
4 that they claimed they did not then possess.

5           On August 29, 2007, MDT moved for sanctions against Plaintiffs.  
6 Docket Document No. 25. MDT argued that Plaintiffs had produced only  
7 incomplete responses to some items in the request for production of  
8 documents, and that Plaintiffs requested an extension with respect to  
9 other documents. Id. MDT further noted that Plaintiffs still had  
10 not disclosed the identity of their expert witness. Id.

11          On September 11, 2007, Plaintiffs responded. Docket Document  
12 No. 26. Plaintiffs claimed that for the most part, their answers  
13 were complete, and to the extent that they were not complete, it was  
14 due to the fact that Plaintiffs, owners of a struggling small  
15 business, did not have ready access to certain documents. Id.  
16 Plaintiffs requested a five-day extension to comply with the request  
17 for certain documents. Id. Plaintiffs further claimed that they had  
18 not disclosed the identity of their expert witness because they were  
19 financially unable to retain one at the time. Id. Plaintiffs  
20 therefore requested an extension of time during which to obtain an  
21 expert. Id.

22          On September 21, 2007, MDT sur-replied. Docket Document No. 28.  
23 On September 24, 2007, we granted MDT's motion for sanctions, and

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1 dismissed Plaintiffs' complaint because of Plaintiffs' failure to  
2 comply with discovery obligations. Docket Document Nos. 29, 30.

3 On October 25, 2007, MDT moved for attorney's fees and costs  
4 under Rules 44.3(b) and 44.1(d) of the Puerto Rico Rules of Civil  
5 Procedure. Docket Document No. 31. Plaintiffs have not responded.

6 Rule 44.1 of the Puerto Rico Rules of Civil Procedure provides  
7 that:

8 In the event any party or its lawyer has acted  
9 obstinately or frivolously, the court shall, in  
10 its judgment, impose on such person the payment  
11 of a sum for attorney's fees which the court  
12 decides corresponds to such conduct.

13 32 L.P.R.A. App. III, R. 44.1(d). Federal courts apply Rule 44.1(d)  
14 where Puerto Rico law supplies the basis for decision in a diversity  
15 case. Grajales-Romero v. Am. Airlines, Inc., 194 F.3d 288, 301 (1st  
16 Cir. 1999).

17 Obstinacy is the lynchpin of the 44.1(d) inquiry. Dopp v.  
18 Pritzker, 38 F.3d 1239, 1252 (1st Cir. 1994). A litigant may be  
19 found obstinate if he was "unreasonably adamant or stubbornly  
20 litigious, beyond the acceptable demands of the litigation, thereby  
21 wasting time and causing the court and the other litigants  
22 unnecessary expense and delay." Dopp, 38 F.3d at 1253. The fact  
23 that a party's claim failed does not mean that that party must also  
24 pay the opposing party's attorney's fees. Id. at 1254; Reyes v.  
25 Banco Santander de P.R., 583 F.Supp. 1444, 1446 (D.P.R. 1984).  
26 "Obstinacy is to be judged in light of the overall circumstances of

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1 the particular case." Correa v. Cruisers, a Div. of KCS Int'l, Inc.,  
2 298 F.3d 13, 31 (1st Cir. 2002); see also Dopp, 38 F.3d at 1253  
3 (finding that a court should look at the case's specific  
4 "personality" when evaluating obstinacy). The degree of the party's  
5 obstinacy is the most important factor in determining whether  
6 attorney's fees are warranted; other factors include the nature of  
7 the litigation, the difficulty of issues involved, and the efforts  
8 and abilities of the attorneys. Correa, 298 F.3d at 31.

9 In this case, we do not find that Plaintiffs acted obstinately.  
10 Although we dismissed Plaintiffs' complaint for failure to comply  
11 with discovery obligations, Docket Document No. 30, Defendant has not  
12 demonstrated that Plaintiffs were "unreasonably adamant or stubbornly  
13 litigious." See Dopp, 38 F.3d at 1253. Defendants have presented no  
14 evidence that Plaintiffs acted in bad faith or with intent to delay  
15 or prolong the proceedings. Rather, the evidence shows only that  
16 Plaintiffs were ill-equipped to enter into the litigation that they  
17 pursued. See Docket Document No. 26 (explaining that Plaintiffs'  
18 failure to comply with discovery obligations resulted from  
19 Plaintiffs' financial struggles). Because we do not find that  
20 Plaintiffs were obstinate, Defendants are not entitled to attorney's  
21 fees and costs.

22 For the reasons stated herein, we **DENY** Defendant's motion for  
23 attorney's fees, Docket Document No. 31.

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**IT IS SO ORDERED.**

2 San Juan, Puerto Rico, this 17<sup>th</sup> day of December, 2007.

3 s/José Antonio Fusté  
4 JOSE ANTONIO FUSTE  
5 Chief U. S. District Judge